but out of a fund which forms part of the personal estate and consists only of personalty. In the English cases most of the controversy has arisen over the provision of a special fund which has had a mixed character, part realty and part personalty. I think that it is now decided that in the cases of a mixed fund the Act of 1867 does not apply at least until the fund is exhausted. But I am unable to find any case where the Act did not apply to a fund consisting entirely of personalty. The word 'general' applies to the debts to be paid, not to the fund out of which the debts are to be paid. It is not as though the Ordinance said out of the personalty generally.

From this it follows that the devisees take subject to the particular mortgages affecting the land devised to them.

This follows from a rule of construction imposed by statute which produces a result possibly different from what the testator intended.

The costs of all parties, solicitor and client, to be paid out of the estate.

Order accordingly.

MOHAMED BIN SIDIN v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) May 24, 1950]

[Singapore — Magistrate's Appeal No. 49 of 1950]

Prevention of Corruption Ordinance, s. 3(a) — Evidence against accused by Police and of an accomplice — Marked notes found in pocket of accused — Weight of evidence.

The Anti-Corruption Branch of the C.I.D. used an agent to trap the appellant, a senior Police Inspector. The agent was provided with certain notes and, with another man who desired to bribe the appellant, met him at a room in a hotel. After the meeting the notes were found in the possession of the appellant in his trouser pocket. The appellant denied taking the notes and denied having any knowledge that these notes were in his pocket. The only evidence as to how the notes got into the pocket of the appellant was that of the agent and the other man. The agent in cross-examination was shown to be quite reckless about committing perjury and the other man was an accomplice. The appellant was convicted and sentenced.

Held, that in the circumstances the evidence of the agent and the other man must be received with the greatest caution and that the learned District Judge, where the appellant was seen with his hands in his pockets after the money had got there, was wrong, without evidence as to what else, if anything, the pocket contained, in coming to the conclusion that it was impossible for the appellant to fail to be conscious of such notes, especially where the appellant had earlier on consumed considerable quantities of strong drink, though not drunk, and therefore in all the circumstances it would be unsafe to convict.

MAGISTRATE'S APPEAL.

D. K. Walters and *Wee Chong Jin* for the appellant.

A. V. Winslow (D. P. P.) for the Crown.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the appellant had been charged with a series of offences under section 3 (a) of the Prevention of Corruption Ordinance (No. 41 of 1937). He was acquitted of all the charges except one. On this charge he was convicted and sentenced.

The facts are simple. The authorities wished to set a trap for the appellant. To do this they made use of an agent, who was not a member of the Police Force. On the day in question there was a meeting between the appellant, this agent and another man who desired to bribe the appellant. The agent was provided with certain notes. After the meeting these notes were found in the possession of the appellant, in his trouser pocket. That much is certain. As to how these notes got into the pocket of the appellant the prosecution depended entirely on the evidence of the agent and of the other man who was, in the full sense of the term, an accomplice. The agent was not technically an accomplice, but, from his admissions in cross-examination, it is clear that he is quite reckless about committing perjury. If the evidence of these witnesses could be accepted there would be no doubt about the guilt of the appellant. In the circumstances their evidence must be received with the greatest caution. While it is, of course, difficult to obtain satisfactory evidence in the cases, it must be remembered that it is very easy to fake a case of this kind, and, in the case of an unpopular and zealous officer, such a thing is quite likely to happen. An agent of the type employed in this case would not, in all probability, be at all scrupulous as to the method he employed in transferring the notes in question onto the possession of the appellant. The learned District Judge, in my opinion, was correct in his view of the case when he considered that it turned on the possibility of the appellant being ignorant of the fact that these notes were in his pocket. If such a thing were possible then in the circumstances the crime would not have been proved.

The meeting took place after the appellant had attended a party at which he had consumed considerable quantities of strong drink, though he was not in any way drunk. After the money was in his pocket he was seen with his hands in his pockets. I do not

think that there would have been any difficulty in slipping a small bundle of notes into the pocket of the appellant without attracting his attention. The more difficult question is whether he could have failed to be conscious of the notes when he put his hands into his pockets. The learned District Judge is quite sure that the supposition is impossible. I am unable without evidence as to what else, if anything, the pocket contained, to feel so sure on the matter.

After careful consideration I have come to the conclusion that it would be unsafe to convict. The appeal is, therefore, allowed and the conviction quashed.

Appeal allowed.

CONSTANCE QUAKER (M.W.)
v.
KHO SEOK ENG.

[Orig. Civ. Juris. (Murray-Aynsley, C.J.) May 30, 1950]

[Singapore — Suit No. 856 of 1949]

Debtor and Creditor (Occupation Period) Ordinance, 1949, s. 13 — Mortgage repaid during occupation period — Whether prevented from re-opening the transaction.

During the Japanese occupation of Singapore a pre-war mortgage loan was repaid under circumstances that the mortgagee would have been entitled to have the amount of the debt revalued and to recover the revalued amount under the Debtor and Creditor (Occupation Period) Ordinance, 1949. When the said debt was repaid the mortgaged property was not reconveyed to the mortgagor. In 1948 a mutual agreement was entered into whereby the mortgagee on being given $100/- and a promise of a further $150/- reconveyed the said property to the mortgagor.

Held, that the aforesaid agreement did not provide for the payment or settlement of the pre-occupation debt within the meaning of section 13 (b) of the Debtor and Creditor (Occupation Period) Ordinance, 1949.

CIVIL SUIT.

C. J. Koh for the plaintiff.

Eric Choa for the defendant.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — This case involves a small point under the Debtor and Creditor (Occupation Period) Ordinance, 1949. Certain property was mortgaged before the occupation period. During the occupation period the amount owing on the mortgage was repaid under such circumstances that the mortgagee would have been entitled to have the amount of the debt revalued and to recover the balance in ordinary circumstances. As it is, the question arises whether the mortgagee is prevented by section 13 from re-opening the transaction.

The circumstances are these. When the debt was repaid the property was not reconveyed to the mortgagor, who was given the documents of title. An agreement was entered into between the parties in the following terms :—

"The parties concerned have heretofore consented and mutually agreed upon to dissolve the existing indenture abiding to the following conditions:—

1. The sum of one thousand Dollars ($1,000.00) to be paid by the Mortgagor to the Mortgagee in settlement of the amount received as stated in the previous existing Indenture.
2. All the necessary documents appertaining to the said property known as No. 19 Lincoln Road, to be returned to the Mortgagor upon payment of the above prescribe amount, together with interest thereto if any.
3. Upon completion of this Indenture all previous documents relating to the Mortgage are to be treated as null and void and the Mortgagee shall have no further claims whatsoever against the said property.

This Indenture has been prepared at the consent of the above parties and have hitherto agreed jointly that the foregoing conditions be treated legally binding."

After the occupation period nothing happened until 1948 when an agreement to the following effect was entered into. The mortgagee reconveyed the property and was given $100 in cash and promised a further $150 if the property should be sold. At that time the position of the parties, owing to the existence of the Moratorium Proclamation, was that the mortgagor had no right to reconveyance while the mortgagee had no right to recover any part of the mortgage debt. Subsequent legislation created new rights for mortgagees. As I have said, the mortgagee is entitled to something unless section 13 prevents that right from arising in the circumstances. That section reads as follows :—

"13. Nothing in this Ordinance shall affect any agreement made between a debtor and creditor at any time after the end of the occupation period for the purpose of —

(a) Valuing any payment made during the occupation period in respect of a pre-occupation debt or an occupation debt (whether accrued due or not); or
(b) Providing for payment or settlement of any pre-occupation debt or occupation debt or part thereof; or
(c) Determining the rate for payment of any such interest as is referred to in sub-section (1) of section 10 of this Ordinance."

The words to be considered are those under the heading (b). There is here an agreement made after the end of the occupation period. Did that agreement provide for the payment or the settlement of a pre-occupation debt? Certainly not for the payment. Can it be described as a settlement? In my opinion the parties had no intention of doing anything except of disposing of the outstanding legal estate. I am not satisfied that the agreement extended to any claim that might arise as the result of future legislation.